

IN THE
Court of Appeal of the State of California

IN AND FOR THE
Fifth Appellate District

COURTROOM PROCEEDINGS

The court met in its courtroom at 1:30 P.M. Present: Honorable Nickolas J. Dibiaso, Acting Presiding Justice; Honorable Gene M. Gomes, Associate Justice; and Eve Sproule, Court Administrator/Clerk, by Anthony Lauria, Senior Deputy Clerk.

F037474 Valley Children's Hospital v. County of Madera

Parties stipulate that (1) Cornell, J., the absent assigned justice, participate in the determination of this appeal, and (2) Cornell, J. to listen to the recording of oral proceedings upon his return.

Cause called and argued by Walter W. Whelan, Esq., counsel for appellant and by Douglas W. Nelson, Esq., Deputy County Counsel, counsel for respondent.

Submission deferred until Thursday, October 24, 2002 for Cornell, J. to listen to the recording of oral argument.

Court recessed until Friday, October 18, 2002 at 10:00 A.M.

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F034023 People v. Chor Bolo Lor et al.

The superior court shall issue amended abstracts of judgment that differ only as follows from the original abstracts of judgment:

(1) Kan's amended abstract of judgment shall (a) delete the three-year upper-term count one enhancement for commission of the crime in association with a criminal street gang, impose a count one sentence of 25-to-life (15-to-life for second-degree murder and the 10-year upper term for personal use of a firearm) instead of, as in the original abstract of judgment, a count one sentence of 28-to-life (15-to-life for second-degree murder, the 10-year upper term for personal use of a firearm, and the three-year upper term for commission of the crime in association with a criminal street gang), and order that he not be paroled until service of a minimum of 15 calendar years, (b) impose a section 1202.45 additional restitution fine of \$1,000 instead of \$10,000, and (c) order joint and several liability with Lor and Yang for victim restitution. The aggregate sentence in Kan's amended abstract of judgment shall be 45-to-life instead of 48-to-life as in the original abstract of judgment.

(2) Lor's amended abstract of judgment shall (a) delete the three-year upper-term count one enhancement for commission of the crime in association with a criminal street gang, impose a count one sentence of 19-to-life (15-to-life for second-degree murder and the four-year middle term for personal use of a firearm) instead of, as in the original abstract of judgment, a count one sentence of 22-to-life (15-to-life for second-degree murder, the four-year middle term for personal use of a firearm, and the three-year upper term for commission of the crime in association with a criminal street gang), and order that he not be paroled until service of a minimum of 15 calendar years, (b) impose a section 1202.45 additional restitution fine of \$1,000 instead of \$10,000, and (c) order joint and several liability with Kan and Yang for victim restitution. The aggregate sentence in Lor's amended abstract of judgment shall be 34-to-life instead of 37-to-life as in the original abstract of judgment.

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(3) Yang's amended abstract of judgment shall (a) delete the count three judgment of conviction of attempted murder and imposition and stay of a sentence of 14 years (the seven-year middle term for attempted murder, the four-year middle-term for personal use of a firearm, and the three-year upper term for commission of the crime in association with a criminal street gang), (b) order joint and several liability with Kan and Lor for victim restitution, (c) order an entitlement to credit for payment of the \$6,959 order for victim restitution against the \$10,000 section 1202.45 additional restitution fine, and (d) impose the identical aggregate sentence of 18 years as in the original abstract of judgment.

We reverse and remand Yang's count three judgment of conviction of attempted murder. If within 30 days after the filing of the remittitur in the superior court the prosecutor files a written election to try him on a charge of attempted murder, and if within 60 days after the filing of the remittitur in the superior court he is brought to trial, the superior court shall proceed accordingly. (See Sec.1382, subd. (a)(2).) The superior court otherwise shall enter a count three judgment of conviction of attempted voluntary manslaughter and shall sentence him accordingly. (See *In re Bower*, supra, 38 Cal.3d at p. 880.)

In all other respects, the judgments are affirmed. Ardaiz, P.J.

We concur: Dibiaso, J.; Levy, J.

[NOT TO BE PUBLISHED IN OFFICIAL REPORTS]

F041126 Barnett v. Kern Oil & Refining Co., and Does 1-25

Appellant having failed to perform the acts necessary to procure the record after the clerk of the trial court issued notice pursuant to the provisions of rule 8(a)(1), California Rules of Court, IT IS HEREBY ORDERED that the appeal in the above-entitled action is dismissed.

IN THE

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F038897 Jory, Peterson, Watkins & Smith, Inc. v. Media Services, Inc.

Oral argument having been waived in the above-entitled case in accordance with the provisions of a notice mailed to counsel, the calendar date heretofore set is vacated and the case is submitted for decision.

F040938 Christina L., v. Fresno Co. Dept. of Children & Family Services

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.

By the Court.

[NOT TO BE PUBLISHED IN OFFICIAL REPORTS]

F041322 Cindy O. v. Superior Court of Tulare Co.; Tulare Co. Health & Human Services

Pursuant to the terms of this court's order of October 7, 2002, and the failure of any party to request oral argument, the oral argument date of November 7, 2002, is vacated.

This matter is deemed submitted on the date of this order.

F041364 Anita B. v. Superior Court, Fresno Co.; Fresno Co. Dept. of Children & Family Services

Pursuant to the terms of this court's order of October 8, 2002, and the failure of any party to request oral argument, the oral argument date of October 31, 2002, is vacated.

This matter is deemed submitted on the date of this order.

F040078 People v. Guzman

Counsel having failed to request oral argument in the above-entitled case, oral argument is deemed waived in accordance with the provisions of a notice heretofore mailed to counsel and the cause is submitted.

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F040078 People v. Guzman

The judgment is affirmed.

By the Court.

[NOT TO BE PUBLISHED IN OFFICIAL REPORTS]

F041333 Theodore H. v. Tulare Co. Health and Human Services

Counsel having failed to request oral argument in the above-entitled case, oral argument is deemed waived in accordance with the provisions of a notice heretofore mailed to counsel and the cause is submitted.

F039600 Zasqueta, et al v. Zasqueta

The judgment is reversed and the matter remanded to the trial court with directions to vacate its order granting the Zasuetas' request for visitation. Upon timely request, the petition shall be reheard before a different trial judge. Costs are awarded to Stephanie Zasqueta. Wiseman, J.

We concur: Vartabedian, Acting P.J.; Harris, J.

[CERTIFIED FOR PUBLICATION]

F041383 People v. Alliallah

Appellant having filed an abandonment and/or request for dismissal of appeal, IT IS HEREBY ORDERED that the appeal in the above-entitled action is dismissed.